

Advisory Action
After the Filing of an Appeal Brief

Application No.

09/557,234

Examiner

Andrea M. Valenti

Applicant(s)

O'DONNELL, PATRICK J.

Art Unit

3643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 29 March 2005 is acknowledged.

1. ☐ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☐ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief.
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☐ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☒ Other: See Continuation Sheet

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Continuation of 4 Other: Applicant filed a request for reconsideration. However, the examiner has not found applicant's arguments to be persuasive and thus maintains the rejection set forth in the office action mailed 24 September 2004. Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art. Guo Figure 6 is a view of the face of the nozzle, which contains a series of apertures in circular orbits surrounding the center of the face of the nozzle. The longitudinal axis passes through the center of the face of the nozzle (which applicant has identified as element #42 in Fig. 1 of the pending application) and thus the apertures of Guo that emit the spray are directing the water in a parallel direction of the longitudinal axis and thus directed the water outwardly generally around the longitudinal axis. Applicant has not gone into any detail about the spray being emitted around the entire circumference of the nozzle as alternately claimed in independent claim 19. Thus, examiner maintains that Guo alone teaches all of the structural limitations as presented in independent claim 36. The Guo reference was cited to teach the known structure of the spray apparatus. Guo teaches it is known to provide a hand held spraying apparatus with a handle, an elongated body, the nozzle fixedly connected to the handle and being configured to move with the handle. The "Jet-All" reference was cited to teach that it is notoriously well-known to take a handle held spraying apparatus and use it to remove insects from vegetation by inherently advancing and retracting the nozzle in a generally horizontal direction. The nozzle would inherently be advanced and retracted in order to insert the nozzle into the bush as illustrated in the "Jet-All" brochure. Furthermore, examiner maintains that it is obvious that during routine spraying in order to inherently cover the entire bush applicant's claimed orientation would be achieved. Applicant's claim language does not limit the orientation to just that orientation. It is desired to have full coverage and thus one of ordinary skill in the art would have to position the apparatus in a variety of positions to meet the method steps and would have to rotate it in multitude of directions. At some point during the rotation to thoroughly cover the vegetation it would be obvious to achieve the claimed orientation. In other words, it is desirable to have complete application coverage of the vegetation for effective results and this complete coverage is achieved by an obvious multitude of orientations to treat the vegetation. By achieving complete coverage one of ordinary skill would have inherently achieved the orientation presented by applicant at some point during the application. Applicant has not limited the method to just the steps outlined in the claim, i.e. applicant has not claimed "only rotating the apparatus to at least about 90 degrees so that the longitudinal axis of the nozzle is moved to a second elevation but remains generally horizontally disposed during rotation". Thus one of ordinary skill in the art is free to orient the wand in multiple orientations. By rotating the wand in different orientations inherently increases the coverage area because the spray is reaching parts of the vegetation that wouldn't have been reached if it remained in merely one orientation. It is obvious to orient a device in a desired manner to fit the space constraints of the situation. Orientation of the wand would depend on the size and shape of the vegetation. For example, a tree/bush that is tall, possibly even taller than the user would require an orientation to reach the higher elevations. Also, if the tree/bush is very wide it would be obvious for the user to have to advance and retract the wand to cover the full width of the bush. Maybe the tree/bush is located close to a fence and only allows access from one side of the bush. It would be obvious to one of ordinary skill in the art to advance and retract and re-orient to achieve full coverage and in a manner that prevents spray back as taught by "Jet-All". Therefore, "Jet-All" obviously teaches all the method steps presented by applicant.